

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RICARDO BUTLER #360219,

Plaintiff,

v.

Case No. 2:05-CV-90

R. TENUTA, et al.,

HON. GORDON J. QUIST

Defendants.

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

The Court has before it Plaintiff's Objections to the magistrate judge's report and recommendation dated January 22, 2009, in which Magistrate Judge Greeley recommended that Defendant's motion for summary judgment be granted in its entirety. He further recommended that Plaintiff's motions for sanctions, to strike, for a temporary restraining order or preliminary injunction, and appointment of counsel be denied. With regard to Plaintiff's claim, the magistrate judge concluded that Plaintiff has failed to show an Eighth Amendment violation because Defendants' use of force was reasonable. He noted that Plaintiff was never exposed to injury or extreme pain and Defendants used only a degree of force that was necessary to gain control of Plaintiff. The magistrate judge concluded that Defendants Bouchard and Armstrong are entitled to summary judgment for the independent reason that they were not personally involved in the alleged conduct. Finally, the magistrate judge concluded that Defendants are entitled to qualified immunity.

After conducting a *de novo* review of the report and recommendation and relevant portions of the record, and having considered Plaintiff's Objections, the Court concludes that the report and recommendation should be adopted.

Although Plaintiff disagrees with the magistrate judge that Defendants did not use excessive force in an attempt to control him, Plaintiff fails to cite any compelling reason why the magistrate judge's conclusion was factually or legally erroneous. Plaintiff's remaining rejections concerning Defendants Bouchard's and Armstrong's knowledge of the incident and qualified immunity present no basis for rejecting the magistrate judge's conclusions on these issues.

Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued January 22, 2009 (docket no. 47) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (docket no. 28) is **GRANTED** in its entirety, and the following motions are **DENIED**: Plaintiff's Motion for Sanctions (docket no. 42), Plaintiff's Motion to Strike (docket no. 41), Plaintiff's Motion for a Temporary Restraining Order or Preliminary Injunction (docket no. 38), and Plaintiff's Motion to Appoint Counsel (docket no. 33).

IT IS FURTHER ORDERED that there is no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

This case is **concluded**.

Dated: March 24, 2009

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE